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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,040	01/29/2002	Eric Baer	A-7273	2689

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EXAMINER

RIBAR, TRAVIS B

ART UNIT

PAPER NUMBER

1711

DATE MAILED: 01/29/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

53

Office Action Summary	Application No.	Applicant(s)	
	10/058,040	BAER ET AL.	
	Examiner	Art Unit	
	Travis B Ribar	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3, 5</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 19-31 in Paper No. 7 is acknowledged.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 24 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 24 and 30 recite the limitation "...second adhesive tie layer..." in lines 2-3 of claim 24 and line 2 of claim 30. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 19-22 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Svensson in view of Harita et al.

The applicant included Svensson (EP 0423511 A1) in the Information Disclosure Statement dated July 1, 2002.

Svensson discloses a multilayer film useful for packaging food that has a paper substrate (column 5, line 41) coated with layers of an adhesive layer and a blend of ethylene vinyl alcohol (EVOH) and polyethylene (PE) (Figure 1). The EVOH/PE blend has the same ratio of materials that the applicant claims in claims 19 and 26 (column 4, lines 6-16). The substrate is also coated on one side with PE, meeting that requirement of claims 21 and 27.

Figure 1 in the reference therefore fulfills the substrate requirements of claims 19 and 26, along with two of the three layer requirements the applicant claims (the adhesive tie layer and the blend layer). Figure 2, which further includes another tie layer between this multilayer structure and the substrate, fulfills that requirement of claim 20. However, there is no mention of an additional layer of low density PE or the ethylene content of the EVOH polymer.

Harita et al. discloses that low density PE is useful as a heat-sealing layer (column 6, line 66) in multilayer food packaging structures (column 7, line 49). Harita et al. also teaches that EVOH that has the amount of ethylene in claims 22 and 28 is useful in such applications because of its barrier properties.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to add a low density PE layer to the structure in Svensson and to use

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EVOH that had the ethylene content that the applicant claims. The motivation for adding the low density PE layer would be to add heat sealing properties to that side of the multilayer film. The motivation for using the applicant's specified ethylene content would be to improve the barrier properties of the film. Therefore it would have been obvious to combine Harita et al. with Svensson to obtain the invention as specified in claims 19-22 and 26-28.

6. Claims 23, 25, 29, and 31 rejected under 35 U.S.C. 103(a) as being unpatentable over Svensson in view of Harita et al. as applied to claims 19 and 26 above, and further in view of Charrier.

The combined teachings of Harita et al. and Svensson teach the multilayer structure the applicant claims (discussed above), but Svensson does not explicitly state that the PE in the EVOH/PE blend can be low density PE, teaching only a general PE. Charrier teaches that regular PE encompasses low density PE. Therefore, Svensson encompasses the blend of EVOH/low density PE that the applicant claims in claims 23 and 29.

In addition, Svensson teaches the blend ratios of PE to EVOH in claims 25 and 31 and Harita et al. teaches the ethylene content of the EVOH in claims 25 and 31. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of invention to use low density PE in the multilayer structure taught by the combination of Svensson and Harita et al. and to use the specific compositions that the applicant claims. The motivation for using low density PE would be that Svensson's disclosure of

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regular PE includes the use of low density PE. The motivation for using the specific composition the applicant claims would be that the references teach towards such a composition. Therefore it would have been obvious to combine Charrier with the combined teachings of Harita et al. and Svensson to obtain the invention as specified in claims 23, 25, 29, and 31.

7. Claims 24 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Svensson in view of Harita et al. as applied to claims 19 and 26 above, and further in view of both Bradfute et al. and Rosenbaum et al.

The laminate structure taught by the combination of Svensson and Harita et al. include an adhesive tie layer made from PE (Svensson column 5, line 14), but do not mention that the adhesive tie layer may be made from a modified PE. Both Bradfute et al. (column 3, lines 65-66) and Rosenbaum et al. (column 9, lines 65-66) show that it is known in the art that adhesive tie layers may be made from modified PE because of their advantageous adhesive properties.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use modified PE as the adhesive tie layer in the laminate structure taught by the combination of Svensson and Harita et al. The motivation for doing so would be to improve the interlayer adhesion in the laminate. Therefore it would have been obvious to combine the knowledge in Bradfute et al. or Rosenbaum et al. with Svensson and Harita et al. to obtain the invention as specified in claims 24 and 30.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis B Ribar whose telephone number is (703) 305-3140. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (703) 308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Travis B Ribar
Examiner
Art Unit 1711

TBR
January 21, 2003



James J. Seidleck
Supervisory Patent Examiner
Technology Center 1700